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Department of Environmental Protection
On
“Brownfields and the State Tax Incentive Redevelopment”
Before the
U.S. House Committee on Government Reform,
Subcommittee on Federalism and the Census
September 13, 2005
Washington, D.C.

Mr. Chairman and members of the Subcommittee, thank you for inviting me to testify today. I appreciate the opportunity to share some ideas that can enhance all of our efforts to promote redevelopment projects that create jobs, revitalize communities and grow our tax bases.

I would like to start by highlighting some of the elements that have made Pennsylvania’s Land Recycling Program a national model for transforming abandoned, idle properties into new economic opportunities. I then would like to address several key recommendations for this panel to consider as we move forward to ensure the continued success of brownfield remediation across the country.

Prior to 1995, the general business consensus among potential Pennsylvania businesses was to abandon so-called “brownfields” rather than put them back into productive use. Pennsylvania’s Land Recycling Program --- promulgated collectively as the Land Recycling and Environmental Remediation Standards Act (Act 2 of 1995), the Economic Development Agency, Fiduciary and Lender Environmental Liability Protection Act (Act 3 of 1995), and the Industrial Sites Assessment Act (Act 4 of 1995) --- helped to reverse this trend.

In Pennsylvania, tens of thousands of jobs have been created or retained, and the state is closing in on its 2,000th approved cleanup, including 700 in the last three years. The success of the program rests on several key cornerstones --- scientifically sound and reasonable cleanup standards, liability relief from future cleanup requirements under state environmental statutes, standardized reviews and time limits, development authority, lender and fiduciary liability protection, and financial assistance.

Pennsylvania has a significant track record of making environmental protection work for businesses and employees. Governor Edward G. Rendell has expanded these efforts, working aggressively to provide new incentives and put in place enhanced management approaches that hasten brownfield redevelopment.

The Governor’s Business in Our Sites Fund provides \$300 million for local redevelopment authorities and economic development corporations to make brownfield sites “pad ready.” The money helps to pay for site acquisition, remediation and preparation, enabling these local entities to market shovel-ready sites to businesses that are seeking to build or expand immediately. This Business in Our Sites Fund was part of an ambitious \$2 billion economic stimulus package that offers a clear set of strategic investments to rebuild the economy and revitalize Pennsylvania.

Another critical piece of that package was PennWorks, a \$250 million voter-approved bond initiative that finances improvements to Pennsylvania’s water and wastewater systems. Aging

infrastructure can be a disincentive to development, making it more difficult to lure businesses. PennWorks funds upgrades to make older sites more attractive while also ensuring a clean, safe water supply in Pennsylvania.

DEP and the Department of Transportation unveiled a Smart Growth Permit in October 2003 to speed up infrastructure improvements in aging communities, reducing the number of individual stream work permits by 22 percent and cutting the processing time from several months to a few weeks for most projects. And, our new Clean Fill Policy creates a general permit for the placement of materials in residential and industrial settings, revising standards that environmental groups and contractors said were inordinately complex and didn't do the job. Both of these revisions speed up the permitting process to make greenfield development less attractive.

Governor Rendell also put in place policies aimed at making government more efficient and saving the regulated community time and money --- all while moving to clean up contaminated sites and eliminate any threat to public health and safety. The Brownfield Action Team, launched in 2004, created a single-point-of-contact system to streamline permitting processes and redevelopment efforts for those sites that local officials target as redevelopment priorities. BAT relies on communities to tell the Department of Environmental Protection which brownfield projects are priorities for revitalizing an area, and requires communities to show cleanup and financing plans as well as the proposed use of the site and its benefits to the area. Local and state governments and private development efforts will work to get the job done as quickly as possible. BAT cuts permitting time in half.

DEP approved its first BAT project last summer to redevelop 1,600 acres of the former Bethlehem Steel Corp. site in Northampton County with a mix of commercial, office, manufacturing and warehousing spaces that eventually will employ 6,000 workers with an annual payroll of \$210 million. Since then, other projects have been approved and are moving ahead in Adams, Beaver, Berks, Bradford, Cambria, Chester, Lackawanna, Luzerne, Monroe and Philadelphia counties.

For low-risk brownfield sites, the Governor streamlined the process so that remediation plans that receive the stamp of approval from a licensed professional engineer are considered to meet all of the requirements of the Land Recycling Program's cleanup standards. This allows communities to reclaim smaller, low-risk sites that might not appeal to larger developers but still mean a great deal to small businesses seeking to reinvest in neighborhoods.

The Rendell administration also added another enhancement through a historic Memorandum of Agreement (MOA) between DEP and the U.S. Environmental Protection Agency to make Pennsylvania's Land Recycling Program the first and only in the nation to serve as a "one-stop shop" for state and federal standards guiding the cleanup of brownfield sites. The MOA clarifies that sites remediated under the state's brownfields program also satisfy requirements for three key federal laws: the Resource Conservation and Recovery Act; the Comprehensive Environmental Response Compensation Liability Act, commonly referred to as Superfund; and the Toxic Substances Control Act. Removing the threat of federal legal action once a site meets Pennsylvania's stringent cleanup standards will encourage more businesspeople and economic development agencies to clean up and redevelop old industrial sites. The Commonwealth thanks and commends EPA for its leadership and partnership on this new way of doing business that has been so helpful to us.

Pennsylvania also is moving ahead to allow mine-scarred lands, what some call “greyfields,” to be eligible for benefits similar to those now enjoyed by brownfield redevelopers. This has tremendous import for our Commonwealth, where we have more abandoned mines than any other state in the nation, and it promises to transform many of our coal communities into thriving commercial districts again.

One of the reasons our brownfields program has been so successful is that it has evolved to meet the changing demands of the market. That market continues to change, so our programs must continue to evolve to keep pace and ensure brownfield redevelopment remains competitive. Despite the many successes in Pennsylvania’s Land Recycling Program, there is room for improvement --- but most of that depends on the support and assistance of our federal partners. There are several steps the federal government can take to help states advance brownfield redevelopment programs.

First, we need more flexibility in the U.S. Environmental Protection Agency’s brownfield funding program. EPA provides what commonly is called Subtitle C money that helps states start up and maintain brownfield programs. These funds have been of critical importance to us and we are grateful for them. We feel, however, that the money can be more optimally deployed. In states without brownfields programs, federal grant money gets passed directly to local governmental agencies, not the states. Because Pennsylvania has an established brownfields program of its own, we receive the EPA funding directly. Our Commonwealth under the Rendell administration has received \$988,000, \$1.06 million and \$1.02 million from EPA over the last three fiscal years, respectively.

The rules governing the allocation of these federal dollars are unnecessarily restrictive to states that have successful brownfields programs. For example, no more than 50 percent of our federal grant can be spent on remediation. The remainder must be spent on things such as marketing and administrative support. For states starting up a brownfields program, these costs are important. But for states like Pennsylvania, the real need is remediation, and giving states with established programs more flexibility could make all the difference in ensuring resources to help rebuild communities.

The stark reality is that brownfield redevelopment is difficult --- both from a perception standpoint and a cost standpoint. Many developers are still hesitant to tackle a brownfield remediation project without strong assurances with regard to both remediation costs and legal liabilities. Without liability protection, developers, local redevelopment authorities and businesses are hesitant to consider any form of ownership or even redevelopment partnership. Banks and other institutions are unlikely to finance these projects.

Pennsylvania’s Land Recycling Program does provide liability protection for brownfield development. Moreover, through our MOA with EPA, as described above, we can give developers limited comfort with respect to associated federal liabilities. Necessary improvements to this good foundation would include a more comprehensive federal assurance of liability relief. In addition, the Pennsylvania MOA with EPA really extends only to joint processing of applications. It does not mean that federal liability can be relieved by successful participation in the state brownfields program. To provide the assurances that are necessary to developers, these efforts need to progress to genuine liability relief as opposed only to joint processing of applications.

In addition to liability relief, developers also seek assurances with respect to remediation costs. Fixed prices provide an incentive to move forward with redevelopment. It helps developers prepare budgets and attain financing because it removes the worries that financial institutions have when lending toward contaminated properties. A federal tax credit would enable developers to purchase the insurance they need to guarantee fixed pricing in remediation. The insurance guarantees that remediation costs to the developer will not climb above a set amount. The tax credit puts the insurance costs within reach and provides assurances needed to move ahead with cleanup, removing a hurdle that developers face when confronted by the decision to take on revitalizing abandoned industrial sites. Pennsylvania currently is considering legislation (H.B. 687) introduced by state Rep. Dan Frankel that would create a program for the purchase of certain types of environmental liability insurance, and for grants to pay the costs of those premiums.

Many developers still lack the capital to undertake brownfield ventures. Investors are reluctant to commit money for projects when the return on their investment could be years down the road. Congresswoman Melissa Hart has introduced two pieces of legislation designed to hasten efforts to redevelop old industrial sites common to western Pennsylvania. One bill would confer tax-exempt status on bonds to be used to help finance the cleanup of brownfields. That currently is not the case. Bonds provide developers and businesses with the access to capital they need to clean up the sites. The other bill would allow businesses or developers to build savings accounts free of taxation for the cleanup of such sites. The tax advantages would apply only if the money is spent on remediation. The savings accounts would be the business equivalent of Individual Retirement Accounts, or IRAs. Congress should examine both of these bills as a means to enhance support for brownfield remediation.

Finally, all federal departments should streamline their permitting to favor redevelopment of brownfield sites. Providing incentives and ensuring liability are essential. But streamlining the process is critical to ensure that these sites remain competitive on the open market. The faster we move permits through the process, the more quickly we reclaim these sites and clean up communities.

At the end of the day, revitalizing a brownfields site is a winning proposition --- given a favorable regulatory climate and the right incentives. All of these efforts are critical for redeveloping blighted areas, revitalizing downtowns and strengthening communities. I look forward to working with Congress and our own General Assembly in Pennsylvania to keep this successful program moving forward.

I thank you for your attention. Mr. Chairman and members of the Subcommittee, I'd be happy to answer any questions you have at this time.

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